

NTSB Order No. EA-3689

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 23rd day of September, 1992

Respondent .

Docket SE-12420

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because it was not, as required by Section 821.48(a) of the Board's Rules of Practice,¹ perfected by the filing of a timely appeal brief. We will grant the motion, to which respondent filed no response.

"§ 821.48(a) Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief."

The record establishes that respondent filed a timely notice of appeal from the written decision the law judge served on May 5, 1992.² Respondent did not, however, file an appeal brief within 30 days after that date, that is, by June 4, and the only explanation it has offered for that failure is that the due date was miscalculated.³ However, as the Administrator points out in his motion, the Board has rejected such miscalculations as a basis for finding good cause for accepting a late brief. See Administrator v. Royal American Airways, Inc., 5 NTSB 1089 (1986), Reconsideration denied, 5 NTSB 1090 (1986). In the absence of good cause, dismissal of respondent's appeal is required by Board precedent. See Administrator v. Hooper, NTSB Order No. EA-2781 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

²The law judge's order denied a motion by the respondent to reopen the proceeding that the law judge had terminated, on motion of the Administrator, by order dated March 3, 1992. The law judge ruled that the Administrator's withdrawal of his emergency order of suspension divested him of jurisdiction in the matter, which raised issues concerning respondent's compliance with certain requirements in Part 135 of the Federal Aviation Regulations. Respondent wanted the matter reopened so that it could demonstrate that it was in compliance with Part 135 before the emergency suspension was initiated.

³Respondent's appeal brief was filed on June 5, and on June 17, it sent a letter responding to the Board's General Counsel's request for information that might "support the acceptance of what appears to be a late filing." That request had been made because of uncertainty, later resolved, over the exact date on which the appeal brief had actually been furnished to the Board.